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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/749,871
Filing Date: December 30, 2003
Appellant(s): ZANDER ET AL.

MAILED
JUL 02 2007
GROUP 3700

Andrew D. Stover
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 7, 2007 appealing from the Office action mailed August 10, 2006.

(1) Real Party in Interest

The real party in interest is Kimberly-Clark Corporation.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,802,833	KUDO et al	10-2004
6,520,330	BATRA	2-2003
6,601,705	MOLINA et al	8-2003
6,318,555	KUSKE et al	11-2001
6,264,776	DIPALMA	7-2001
5,752,945	MOSLEY et al	5-1998
5,531,325	DEFLANDER et al	7-1996
2002/0148749	BRISEBOI et al	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al.

In regard to Claim 22, Briseboi discloses a visually coordinated product comprising a product 206 having a body side liner, outer cover, and absorbent core and disposed within a first packaging component 310; the first packaging component 310 disposed in a second packaging component 102 and comprising a wrapper element having a first characteristic (e.g. 106) and a fastening element 722 releasably securing the wrapper element in a closed configuration and having said second visual characteristic (e.g. 108); the second packaging component 102 having the first and second visual characteristics 106, 108 (Fig. 2, [0038], [0016]-[0018], [0045]-[0053]).

Briseboi teaches that either the wrapper element of pouch 310 (Fig. 3) or said fastening element 722 (Fig. 7) provides both said first and second characteristics and therefore does not teach that the first packaging component has a wrapper element with a first visual characteristic (e.g. 106 or 108) and that the fastening element has said second visual characteristic. However, since Briseboi teaches that the first and second characteristics build upon one another to provide a complete set of information about the product ('749, ¶0014), provide information in their own rights as stand alone characteristics, and are not redundant, it would be obvious to one of ordinary skill in the art to modify the article of Briseboi such that the wrapper element of pouch 310 contains a first characteristic (such as the wave icon taught by Briseboi) and the fastening element contains a second visual characteristic (such as the word "heavy or light" as taught by Briseboi) with a reasonable expectation of success.

Claims 14, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330).

In regard to Claim 14, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. The package holds a single product component and a plurality of components (Briseboi, [0033]). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components. The packaging component and a fastening

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element (reminder tag or tear-away strip) may comprise the first and second characteristics (Figs., [0016]-[0018], [0045]-[0053]).

In regard to Claims 18, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging.

In regard to Claim 20, Briseboi et al. disclose the claimed invention but do not expressly disclose that at least one of the first and second visual characteristics comprises a color. However, it would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise colors since colors and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these

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known equivalents to provide visual indication would be within the level of ordinary skill in the art.

In regard to Claim 21, the visual characteristics comprise a pattern (Figures).

Claim 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).

In regard to Claim 16, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra discloses packaging system for disposable consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Briseboi et al in view of Batra disclose that the packaging component may be made from any suitable material (Briseboi [0032]) but do not expressly disclose that the packaging component comprises a nonwoven, spunbond material. Kudo et al. disclose

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packaging for a sanitary product and further disclose that the packaging may comprise a spunbond material (column 7, lines 20-26, column 12, lines 15-39). Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging component of Briseboi in view of Batra to comprise a spunbond material, as taught by Kudo, since Briseboi in view of Batra disclose that the packaging component may be made from any suitable material and Kudo discloses spunbond materials as suitable for packaging sanitary products. Additionally, it would have been obvious to one of ordinary skill in the art to select a spunbond material for the packaging component material, since spunbond materials are known for use in sanitary product packaging, as support by Kudo, and it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claims 17 and 23, Briseboi et al. in view of Batra et al. in further view of Kudo disclose that the package may comprise a spunbond material. Briseboi et al. in view of Batra et al. in further view of Kudo further disclose that the packaging component may comprise a see-through material (Kudo, column 16, line 51-column 17, line 8) but do not expressly disclose that the nonwoven has a specific basis weight. However, Briseboi et al. in view of Batra et al. in further view of Kudo do disclose that the basis weight of a paper material affects intensive properties that are visible to the consumer (Batra, column 5, lines 3-24) and that the basis weight should be small so that the product within the packaging component may be easily confirmed visually (Kudo, column 17, lines 1-8). As such, Briseboi et al. in view of Batra et al. in further view of Kudo are considered to disclose the basis weight of the nonwoven material is to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the packaging component material with a specific basis weight, since it has been held

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that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. (US 6,601,705) in view of Batra and in further view of Briseboi et al.

In regard to Claim 14, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any indicator may be used to indicate the article's performance characteristics. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any visual indicator may be used to indicate the article's performance characteristics.

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Molina et al. in view of Batra disclose that the packaging components may have a first and second visual characteristic but do not expressly disclose that packaging component (either first or second) comprises a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration. Briseboi et al. disclose a packaging system comprising first and second packaging components and further disclose that the components may comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration; this provides for a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product (Figs., [0038], [0016]-[0018], [0045]-[0053]). One of ordinary skill in the art would have been motivated to modify the packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product.

Claims 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra as applied to claim 14 above, and further in view of Kudo (US 6,802,833).

In regard to Claim 16-17 and 23, see previous discussion of these claims over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).

Claims 1, 3-13, 15, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra and further in view of Farris et al. (WO 02/30347).

In regard to Claim 1, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). Batra teaches in Col. 8, lines 58-60 that packaging of multiple items together is known and associating characteristics 15 of individual items with each other and with the container promotes aesthetic value. Thus, it would have

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been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra to promote aesthetic value. Molina et al. (by reference to Swanson) in view of Batra discloses that article comprises peel strip (wrapper) removeably connected to the garment side outer cover ('146, column 5, line 18-column 6, line 23). Molina et al. further disclose that the product may comprise the visual indicator (first and second visual characteristics) (Molina column 3, line 29; column 5, lines 1-8; incorporated) and that the peel strip (wrapper) may comprise the visual indicator (first and second visual characteristics), but do not expressly disclose that the outer cover comprises the visual indicator. Farris et al. disclose a packaging system for a product having a body side liner, absorbent core, and an outer cover and a packaging component, wherein the product and packaging components comprise visual indicators (whole document). Farris et al. further disclose that the visual indicator may be placed anywhere on the product, which would include the outer cover. Thus one of ordinary skill in the art would have been motivated to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al with a reasonable expectation of success.

In regard to Claims 3-4, Molina et al. do not expressly disclose that the product comprises a substrate between the body side liner and absorbent core; however, it would have been obvious to one of ordinary skill in the art to provide the product with a surge layer, or substrate, since it was known in the art to provide disposable absorbent articles with surge layers, as supported by Mosley et al. (US 5,752,945, column 1, lines 10-23) and DiPalma (US 6,264,776, column 11, lines 51-67). Molina et al. also do not expressly disclose that the surge layer comprises one of the first and second characteristics. However, as discussed for Claim 2, Molina discloses that the product may be colored and Farris et al. disclose that any part of the product may comprise the visual indicators. Thus, it would have been obvious to one of ordinary skill in the art to

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modify Molina et al. in view of Batra to provide the surge layer with a first visual characteristic, as taught by Farris et al with a reasonable expectation of success.

In regard to Claims 5 and 20, the first and second visual characteristic may comprise colors (Molina et al., whole document; also see Batra, column 6, lines 41-56).

In regard to Claim 6, the first color may be white and the second may be selected from the group consisted of the colors claimed, including black, green, and red (column 4, lines 30-50).

In regard to Claims 7-10, Molina et al. disclose that the colors may vary in hue and imply that the colors may differ in value (luminosity) and saturation (column 3, lines 12-24; column 4, lines 30-50) but do not expressly disclose that the characteristics have specific values in hue, value, or saturation. However, Molina et al. have disclosed these may be varied to project the desired visual indication to a consumer. As such, hue, value, and saturation are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of Molina et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 11, 12 and 21, the visual characteristics may be embossments or patterns (Batra, column 8, lines 22-49). Furthermore, as discussed for Claim 1, Molina et al. disclose that the indicator may be any color, shape, size or the like. It would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise an embossment or a pattern since colors, embossments, and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

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In regard to Claims 13 and 15, the package holds a single product component and a plurality of components (Molina, Figures, column 2, line 48-column 3, line 40). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components.

In regard to Claim 24, the colors may be non-white and non-black (Molina, column 4, lines 38-41).

(10) Response to Argument

Appellant's arguments filed February 7, 2007 have been fully considered but they are not persuasive.

A new grounds of rejection of claim 22 has been introduced solely to address appellant's remarks, page 25-27, which are newly presented.

With respect to appellant's arguments regarding the rejection of claim 1 over Molina in view of Batra and further in view of Farris: In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Molina teaches a peel strip by reference to Swanson. Swanson teaches "the term "release paper" refers to any sheet material used to protect the adhesive element from contamination prior to use". Swanson also teaches that the adhesive element can be in strips, and so the release paper would only cover

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the select areas of adhesive and not the entire outer cover of the pad. ('146, Col. 5, lines 23-25, 57-60) Batra teaches an article with first and second characteristics on the article itself, that correlate with the same first and second characteristics on the associated packaging. The teachings of Molina and Batra clearly seek to solve a similar problem in the art. An alternate motivation taught by Batra for combining the teachings of Molina and Batra has been stated in the rejection of claims 1 and 19.

As to appellant's argument that Farris does not contribute any of the claim limitations, Farris teaches an absorbent product with visual indicators wherein the visual indicators may be placed anywhere (i.e. on any of the components) of the product. Since the teaching of Farris is in the field of endeavor of Molina, Batra and the claimed invention, there is suggestion to combine the prior art of Farris with the combined teaching of Molina and Batra. Farris corrects the deficiency of the combined teaching of Molina and Batra with respect to an outer cover having a first visual characteristic set forth in claim 1.

In response to the balance of appellant's arguments against the Molina, Batra and Farris references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Remarks, page 14), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge

gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to appellant's arguments regarding the rejection of claims 3 and 4 over Molina in view of Batra and further in view of Farris: The entirety of such arguments depend upon appellant's arguments with respect to claim 1, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claims 5-10 and 24 over Molina in view of Batra and further in view of Farris: In response to appellant's arguments against the Molina and Batra references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Batra teaches color change as a step in conversion of indicia, a step one can physically stop the process at wherein the colors can feasibly be the same, thus Batra does not teach away from using the same colors.

Appellant's argument that there is no suggestion to combine Molina and Batra has been addressed *supra* with respect to claim 1.

With respect to appellant's arguments regarding the rejection of claim 14 over Molina in view of Batra and further in view of Briseboi: Appellant's arguments depend upon arguments with respect to claim 1 that have been addressed *supra*. The element of Briseboi introduced to correct the deficiency of the combined teaching of Molina and Batra is the fastening substrate 722 ('749, Fig. 7, ¶0047) having first and second visual characteristics thereon that subsequently becomes reminder tag 723 when detached from the wrapper of pouch 310.

In response to appellant's argument that there is no suggestion to combine the Molina and Batra and Briseboi references, the examiner recognizes that obviousness can only be

established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Briseboi's visual information system is shown on the pouch as well as the container, therefore knowledge of the product is obtained without having to open the individual package. This is depicted clearly in Figs. 3 and 7 of Briseboi, where the information is located on the outside of the pouch. Therefore, like Molina and Batra, information can be gained about the product prior to opening and thus the devices all seek to solve a similar problem in the art and therefore combination with Briseboi is fairly suggested by the combined teaching of Molina and Batra.

As to appellant's arguments regarding the claim language of a wrapper element, such wrapper element is also seen in Figs. 3 and 7 of Briseboi.

With respect to appellant's arguments regarding the rejection of claim 14 over Briseboi in view of Batra: The entirety of such arguments depend upon appellant's arguments with respect to claim 1, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 16 over Briseboi in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 1, which have been addressed *supra*. The transparent wrapper of Kudo when provided with the visual information systems of the combined teaching of Molina and Batra and Briseboi, yields a product wherein information can be obtained without having to first open the package. In response to appellant's arguments against the Briseboi reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Batra was introduced as the secondary reference to teach visual characteristics on an individual product within a package.

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., that the visual characteristic provide instructions about performance) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to appellant's arguments regarding the rejection of claim 16 over Molina in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 1, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 17 over Briseboi in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 16 over Briseboi in view of Batra and further in view of Kudo, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 17 over Molina in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 1 and claim 16 over Briseboi in view of Batra and further in view of Kudo, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 23 over Briseboi in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 16 over Briseboi in view of Batra and further in view of Kudo, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 23 over Molina in view of Batra and further in view of Kudo: The entirety of such arguments depend upon appellant's arguments with respect to claim 1 and claim 17 over Briseboi in view of Batra and further in view of Kudo, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 18 over Briseboi in view of Batra: The entirety of such arguments depend upon appellant's arguments with respect to claim 16 over Briseboi in view of Batra and further in view of Kudo, which have been addressed *supra*.

With respect to appellant's arguments regarding the rejection of claim 22 as anticipated by Briseboi: Appellant's arguments, see Remarks, pages 25-27, filed February 7, 2007 with respect to the rejection(s) of claim(s) 22 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a different interpretation of the previously applied Briseboi reference.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:

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(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

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A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:

Angela Sykes

Kevin Sirmons

Melanie Hand



FREDERICK R. SCHMIDT
DIRECTOR
TECHNOLOGY CENTER 3700